FEB 13 1945
CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

October Term, 1944.

No. 947

IGAL ROODENKO, PETITIONER,

vs.

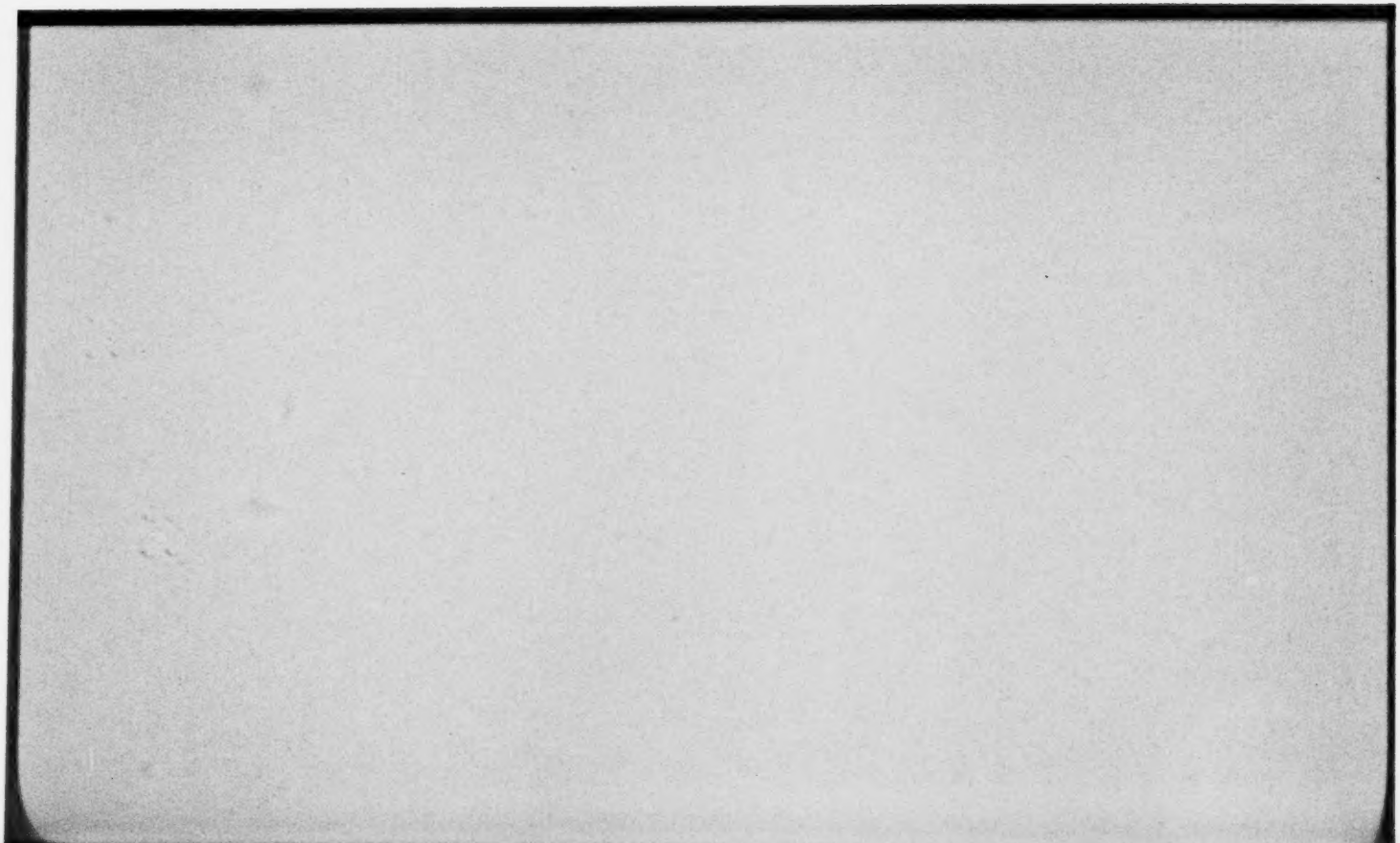
UNITED STATES OF AMERICA, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE TENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

CARLE WHITEHEAD,
Counsel for Petitioner.

ARTHUR A. BROOKS, JR.,
of Counsel.

SMITHWOOD PRINTING CO., 2031 CURTIS STREET, DENVER



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No.

IGAL ROODENKO, PETITIONER,

vs.

UNITED STATES OF AMERICA, RESPONDENT.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The petition of Igal Roodenko respectfully shows to this Honorable Court:

A.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

(Prefatory Note: The record in this case also bears the titles of three other cases which were tried in immediate succession with this case, all being considered, briefed and decided as if one. By stipulation, approved by the Circuit Court of Appeals, a single brief was filed in the above entitled case and all of the evidence in the record

is to be considered, as it was in the lower court, as if introduced in this case. The other three cases are abiding, and are to be governed by, the final decision in this case.)

STATEMENT OF THE CASE.

In the District Court for the District of Colorado, jury being waived, petitioner was convicted of violation of one of the Rules and Regulations promulgated by Selective Service for *Government Operated* Civilian Public Service Camps (Opinion R. 7-14, 55 F. Supp. 648). Appellant admitted the act and challenged the legality and the constitutionality of the Rules and Regulations, of the orders under which they were promulgated and of *that provision* of the Selective Training and Service Act of 1940 under which said orders purported to be issued. The legality and the constitutionality of the *government-operated* Civilian Public Service Camp system is, therefore, the issue, the Circuit Court of Appeals having overruled each of these challenges and affirmed the conviction December 22, 1944, with opinion R. 79-85. Rehearing denied January 9, 1945 (R. 102) without opinion. Not yet reported.

JURISDICTION.

Petitioner submits that this Honorable Court has jurisdiction to review said judgment of affirmance under Judicial Code Section 240, as amended by the Act of February 13, 1925, 43 Stat. 938, and under the Act of March 8, 1934, 48 Stat. 399, 18 U.S.C.A. sect. 688, and the Rules of this Court promulgated pursuant thereto. The writ was granted and jurisdiction taken, apparently under this rule, in *Hartzel vs. United States,* 322 U.S. 608, and in *Korematsu vs. United States* (No. 22 decided Dec. 18, 1944), 65 S. Ct. 193.

STATUTE INVOLVED.

The statute involved is the Selective Training and Service Act of 1940, 50 USCA, Appendix, sects. 301 et seq. (54 Stat. 885.)

The parts of the Act particularly involved are the following:

U.S.C.A. Sect. 301

(a). The Congress hereby declares that it is imperative to increase and train the personnel of the armed forces of the United States. (Sect. 1(a).)

(b). The Congress further declares that in a free society the obligations and privileges of military training and service should be shared generally in accordance with a fair and just system of selective compulsory military training and service. (Sect. 1(b).)

U.S.C.A. Sect. 305 (g)

Nothing contained in this Act shall be construed to require any person to be subject to combatant training and service in the land or naval forces of the United States who, by reason of religious training and belief, is conscientiously opposed to participation in war in any form. Any such person claiming exemption from combatant training and service because of such conscientious objections whose claim is sustained by the local board shall, if he is inducted into the land or naval forces under this Act, be assigned to noncombatant service as defined by the President, or shall, if he is found to be conscientiously opposed to participation in such noncombatant service, in lieu of such induction, be assigned to work of national importance under civilian direction. (Sect. 5(g).)

U.S.C.A. Sect. 310

(a). The President is authorized

(1) to prescribe the necessary rules and regulations to carry out the provisions of this Act;

(2)-(3) to create and establish a Selective Service System, and shall provide for the classification of registrants and of persons who volunteer for induction under this Act on the basis of availability for training and service, and shall establish within the Selective Service System civilian local boards'' etc. (followed by detailed provisions for organization of the Selective Service System and that local and appeal boards shall have civilian personnel but as to

the balance of System "any officer on the active or retired list of the Army, Navy, Marine Corps, or Coast Guard, or of any reserve component thereof" may be assigned to duty in the System without loss of his status in the service from which assigned.

(4) and (5) provide for use of services of other departments of government and for printing, supplies, etc.

(6) authorizes rules and regulations for special services of persons convicted of violation of provisions of this Act.

(b). Provides that the powers vested by the Act in the President may be delegated by him to the Director of the System and by him redelegated to others.

(c). Provides for acceptance of volunteer service.

(d). Makes the Army Chief of Finance the "fiscal, disbursing and accounting agent" of the System.

(e). Provides a medical board "who shall examine the physical, mental and moral qualification requirements for admission to the Army, Navy and Marine Corps" and perform other duties.

EXECUTIVE ORDER.

The President, by Executive Order No. 8675 of February 6, 1941 (6 F.R. 831), authorized the Director of Selective Service "to establish, designate or determine work of national importance under civilian direction" to which may be assigned conscientious objectors classified as opposed to participation in both combatant and non-combatant training and service in the military forces; authorized the Director to make the necessary assignments to such work, to determine the agencies, organizations and individuals that may provide such direction and to have "general supervision and control over such work"; and finally, to prescribe necessary rules and regulations. (Appendix A.)

SELECTIVE SERVICE SYSTEM, ORDER NO. 111.

Director, Lewis B. Hershey, by Order No. 111, June 25, 1943 (Appendix B), established Civilian Public Service Camp No. 111 at Mancos, Colorado, and designated the work to be done therein, by the conscientious objector assignees, "under the technical direction of the Bureau of Reclamation" which shall "be responsible for the housing, feeding, clothing, discipline and provision of necessary medical and dental care. Men shall be assigned to and retained in camp in accordance with the provisions of the Selective Training and Service Act of 1940 and regulations and orders promulgated thereunder. Supervision and control of the Mancos Project shall be under the Selective Service System through the Camp Operations Division of National Selective Service Headquarters."

RULES AND REGULATIONS.

Selective Service System thereupon promulgated "Rules and Regulations for Government-Operated Camps" (Appendix C) for violation of which petitioner stands convicted. They cover ten pages of the appendix and regulate and control every activity of the assignee every hour of the day and are best summarized in a directive issued to the assignees through the camp director, as follows (R. 22):

> "From the time an assignee reports to camp until he is finally released he is under the control of the Director of Selective Service. He ceases to be a free agent and is accountable for all of his time, in camp and out, twenty-four hours a day. His movements, actions and conduct are subject to control and regulation. He ceases to have certain rights and is granted privileges instead. These privileges can be restricted or withdrawn without his approval or consent as punishment, during emergencies, or as a matter of policy. He may be told when and how to work, what to wear and where to sleep. He can be required to submit to medical examination and treatment and to practice rules of health and sanitation. He may be moved from place to place and from job to job, even to foreign countries, for the convenience of the government regardless of his personal feelings or desires."

QUESTIONS PRESENTED AND REASONS RELIED UPON FOR ALLOWANCE OF THE WRIT.

The question is the validity of the Rules and Regulations for violation of which petitioner stands convicted. This question involves that of the validity of Selective Service Order No. 111, authorizing the promulgation of said Rules and Regulations.

Petitioner contends that said Rules and Regulations are invalid and that, therefore, the decision and judgment of the Circuit Court of Appeals affirming the conviction of petitioner for violation of one of said Rules and Regulations should be reversed and that the writ should be allowed to that end.

A.

PETITIONER SAYS THAT SAID RULES AND REGULATIONS AND SAID SELECTIVE SERVICE ORDER NO. 111 ARE, AND EACH OF THEM IS, VOID BECAUSE THEY

1—are outside of any power which Congress delegated or purported or attempted to delegate in or by Section 5 (g) of the Selective Training and Service Act of 1940 or in or by any other part of said Act,

2—prohibit and penalize, that freedom of exercise of religion provided for by the said Act of 1940 and, therefore, are contrary to the Act and contrary to the First Amendment to the Constitution and particularly that clause thereof which guarantees the free exercise of religion,

3—deprive petitioner of his liberty and property without due process of law and take the private property of petitioner for public use without just compensation, contrary to the Fifth Amendment to the Constitution, and

4—subject petitioner to involuntary servitude, not as punishment for crime, contrary to the Thirteenth Amendment to the Constitution.

B.

IF THE SELECTIVE TRAINING AND SERVICE ACT OF 1940 BE CONSTRUED TO AUTHORIZE SELECTIVE SERVICE ORDER NO. 111 AND THE RULES AND REGULATIONS FOR GOVERNMENT OPERATED CAMPS, THEN TO THAT EXTENT SAID ACT IS CONTRARY TO THE FIRST, FIFTH AND THIRTEENTH AMENDMENTS TO THE CONSTITUTION FOR THE REASONS SET FORTH ABOVE (A, 2, 3 and 4).

C.

PETITIONER WAS DETAINED IN THE MANCOS CAMP UNDER MILITARY CONTROL AND DIRECTION AND WAS NOT UNDER CIVILIAN DIRECTION, AS REQUIRED BY THE ACT. HE WAS THEREFORE UNLAWFULLY DETAINED IN THE CAMP AND VIOLATION OF THE RULES AND REGULATIONS PROMULGATED TO GOVERN SUCH DETENTION WAS NO CRIME.

Petitioner further says that in affirming his conviction the Circuit Court of Appeals decided important questions of federal law, namely the questions above stated, which have not been but should be, directly settled by this Honorable Court and, further, that in so affirming said conviction said Circuit Court of Appeals decided said federal questions in a way probably in conflict with applicable decisions of this Court, all of which will be more fully pointed out in the annexed brief.

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued under the seal of this Court, directed to the United States Circuit Court of Appeals for the Tenth Circuit commanding that court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 2968, *Igal Roodenko, Appellant vs. United States of America, Appellee*, to the end that said cause may be reviewed and determined by this Honorable Court as provided by law and that the said judgment of the said Circuit

Court of Appeals be reversed by this Honorable Court and for such further relief as may seem proper. And your petitioner will ever pray.

CARLE WHITEHEAD,
Counsel for Petitioner.

A certified transcript of the record in said case, including the proceedings in the Circuit Court of Appeals for the Tenth Circuit accompanies this petition.

STATE OF COLORADO, City and County of Denver, ss.

Carle Whitehead, being first duly sworn, on oath deposes and says that he is counsel for petitioner, Igal Roodenko; that he has read the foregoing annexed petition and knows well the contents thereof; that he has also carefully read and studied a duly certified copy of the transcript of record which accompanies the petition herein, being the transcript of record in the case at bar; that the matters in said petition are in the judgment of affiant duly supported in and by said transcript of record, and that he knows of the therein recited proceedings and that the statements in said petition are true to the best of his knowledge and belief.

CARLE WHITEHEAD,

Subscribed and sworn to before me this 9th day of February, 1945.

BETTY WALTER,
Notary Public in and for said County and State.

My commission expires March 10, 1945.
(Notarial Seal.)

I do hereby certify that I have carefully examined the foregoing petition for a writ of Certiorari and the allegations thereof are true, as I verily believe, and in my opinion the petition is well founded and the case is one in which the prayer of the petition should be granted by this Court.

CARLE WHITEHEAD,
Counsel for Petitioner.